

EXHIBIT O

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

v.

HONORABLE GEORGE CARAM STEEH

No. 12-20063

DENSO CORPORATION,

Defendant.

/

GUILTY PLEA AND SENTENCING HEARING

Monday, March 5, 2012

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APPEARANCES:

For the Government:

KATHRYN HELLINGS, ESQ.
Assistant U.S. Attorney

For the Defendant:

STEVEN F. CHERRY, ESQ.

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*Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.*

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1 Detroit, Michigan

2 Monday, March 5, 2012

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5 **THE CLERK:** Case Number 12-20063, United
6 States of America versus Denso Corporation.

7 **THE COURT:** Good morning.

8 **MS. HELLINGS:** Good morning.

9 **MR. CHERRY:** Good morning.

10 **THE COURT:** Who will be talking for the
11 government?

12 **MS. HELLINGS:** Katie Hellings for the
13 government.

14 **THE COURT:** Good morning. For the defense?

15 **MR. CHERRY:** Steve Cherry, your Honor.

16 **THE COURT:** Okay. Good morning. Do you have
17 a corporate representative today?

18 **MR. CHERRY:** Yes. My name is Steve Cherry.

19 I am with Wilmer, Cutler, Pickering, Hale and Dorr, and my
20 colleagues with me is Thomas Mueller and Stephanie Wood.
21 The company's representative is Steve Zarowny, the general
22 counsel for Denso International America, Inc., but he's
23 been authorized to speak for Denso Corporation.

24 **THE COURT:** Okay.

25 **MR. CHERRY:** And his colleague is Yasushi

1 "Kirk" Katsumi, also from the Denso International America
2 Legal Department.

3 **THE COURT:** Okay. Good morning.

4 The Court has been presented this morning with a
5 proposed waiver of indictment and acknowledgement of the
6 information in this case, and a proposed plea agreement.
7 So I assume from these documents that the corporation is
8 going to be pleading guilty to the charge of conspiracy to
9 restrain trade, is that right?

10 **MR. CHERRY:** Yes, your Honor.

11 **THE COURT:** Okay.

12 **MS. HELLINGS:** Your Honor, in addition, the
13 government filed a motion to seal Exhibit A to the plea
14 agreement, and just ask that your Honor please grant that
15 motion when the plea agreement is also filed later today.

16 **THE COURT:** So the plea agreement will be
17 become a part of the Exhibit A?

18 **MS. HELLINGS:** No. So there is an Exhibit A
19 to the plea agreement, which we would like to have filed
20 under seal. So the plea agreement can be filed, but
21 Exhibit A we would ask that to be filed under seal.

22 **THE COURT:** Okay. Yes. I took a glance. We
23 seem to have two different versions of Exhibit A. I'm not
24 sure which one. Let me look.

25 **MS. HELLINGS:** Exhibit A is under Tab A of

1 plea agreement.

2 **THE COURT:** Okay. I have that.

3 **MS. HELLINGS:** Okay.

4 **THE COURT:** The Court will -- and I'm
5 assuming that you're joining in that request?

6 **MR. CHERRY:** Yes, we are, your Honor.

7 **THE COURT:** The Court will grant both the
8 request to seal Exhibit -- well, Exhibit A is the only
9 request?

10 **MS. HELLINGS:** That's right, your Honor.

11 **THE COURT:** Okay. Under seal.

12 **MS. HELLINGS:** One additional point, if I may
13 your Honor, Paragraph 8c of the information, there's a
14 small error in it that I just want to note for the record.

15 Turning to 8c, it says: Agreeing, during those
16 meetings, conversations and communications to allocate the
17 supply of ECU's sold to an automobile manufacturer in the
18 United States and elsewhere on a model-by-model basis, and
19 I just wanted to note for the record that the ECU's is
20 actually a standardized product and it's interchangeable
21 across models. So it's not actually sold on a
22 model-by-model basis, and I just wanted to note that for
23 the record.

24 **THE COURT:** Okay. Very fine. And you're in
25 agreement with as well counsel?

4 There are a few places in the information that
5 refer to components being shipped from Japan to the United
6 States to be put in cars manufactured in the United
7 States. We're not aware of that happening with respect to
8 our company. We understand from Ms. Hellings that that
9 may have happened with respect to other companies, and so
10 we just wanted to point out that that's not something that
11 we are aware of. We don't dispute that it may have
12 happened with others.

13 MS. HELLINGS: Not with said company in this
14 conspiracy.

17 MS. HELLINGS: NO. .

18 THE COURT: -- is that right?

19 MR. CHERRY: That's right.

20 MS. HELLINGS: That's right.

21 THE COURT: Very fine. Thank you.

22 MS. HELLINGS: And the issue wi

23 not part of the plea agreement at all.

24 THE COOK: very good. Thanks. All right.

23 so i think if we have you and your client sleep up

1 to the podium, we'll administered an oath. If you would
2 raise your right hand, sir.

3

4 (Defendant sworn in by deputy clerk.)

5

6 **THE COURT:** Okay. Would you state your name
7 for us?

8 **THE DEFENDANT:** Steve Zarowny.

9 **THE COURT:** Mr. Zarowny, you are acting today
10 as an authorized representative of Denso Corporation?

11 **THE DEFENDANT:** Correct.

12 **THE COURT:** And that authorization was by a
13 board resolution?

14 **THE DEFENDANT:** Yes, your Honor.

15 **THE COURT:** Okay. You have signed apparently
16 several documents including an acknowledgement of the
17 information filed in this case?

18 **THE DEFENDANT:** Yes, your Honor.

19 **THE COURT:** And you have gone over that
20 document carefully with your counsel?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** You believe that you understand
23 it?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** You understand the nature of the

1 charges?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And you -- and on behalf of your
4 client, do you waive the reading of this information,
5 counsel?

6 **MR. CHERRY:** We do, your Honor.

7 **THE COURT:** Okay. And you understand the
8 maximum penalty for the violation of conspiracy to
9 restrain trade?

10 **THE DEFENDANT:** Yes, your Honor.

11 **THE COURT:** So you know that the Court may
12 consider statutorily a maximum of \$100 million as a fine
13 or twice the gross pecuniary gain the conspirators derive
14 from the crime, or twice the gross pecuniary loss caused
15 to the victims of the crime by the conspiracy. You
16 understand those are the maximum penalties involved?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** And you signed this document
19 entitled "waiver of indictment"?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** And you understand that permits
22 the Court to proceed to consider a plea based upon the
23 information which is a document written by the government
24 without the participation of a grand jury?

25 **THE DEFENDANT:** I understand, your Honor.

5 THE DEFENDANT: Yes, your Honor.

21 THE DEFENDANT: Understood, your Honor.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: You also signed this Rule 11 plea

1 agreement, is that right?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And you've gone over this
4 document with your counsel carefully?

5 **THE DEFENDANT:** I have, your Honor.

6 **THE COURT:** Again, you understand that the
7 plea agreement contemplates a plea of guilty to the charge
8 of conspiracy to restrain trade?

9 **THE DEFENDANT:** Yes, your Honor.

10 **THE COURT:** And again, you understand the
11 maximum penalty as I've described it already this morning?

12 **THE DEFENDANT:** Yes, your Honor.

13 **THE COURT:** And as a part of this agreement
14 if the Court accepts it, the corporation can anticipate a
15 sentence which would include a fine of -- I saw it here
16 earlier --

17 **MS. HELLINGS:** Seventy-eight million.

18 **THE COURT:** -- \$78 million, you understand
19 that?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** And as a part of this agreement,
22 the government would -- has promised not to bring other
23 criminal charges against the corporation for anything
24 occurring up to the date of the plea in this case today,
25 today's date or sentencing?

1 MS. HELLINGS: Today's date is fine.

4 THE DEFENDANT: Yes, your Honor.

16 THE DEFENDANT: Yes, your Honor.

20 THE DEFENDANT: Yes, your Honor.

25 **THE DEFENDANT:** We understand, your Honor.

5 MR. CHERRY: No, your Honor.

8 THE DEFENDANT: No. _____

12 THE DEFENDANT: Yes, your Honor.

17 THE DEFENDANT: Yes, your Honor.

22 THE DEFENDANT: Understood, your Honor.

1 THE DEFENDANT: We understand.

4 You understand, and the corporation does, it has
5 the right to be represented by an attorney throughout the
6 case including the trial, sentence and appeal of the
7 matter?

8 THE DEFENDANT: Yes, your Honor.

12 THE DEFENDANT: Yes, your Honor.

18 THE DEFENDANT: Yes, your Honor.

1 reasonable doubt?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And in this connection, of
4 course, it had the right to have this matter considered by
5 a jury to make the decision as to its guilt or innocence
6 in the case?

7 **THE DEFENDANT:** Yes, your Honor.

8 **THE COURT:** And assuming a jury trial, any
9 jury verdict would have to be unanimous, that is, each and
10 every juror among the 12 jurors hearing the case would
11 have to agree before a verdict could be returned?

12 **THE DEFENDANT:** We understand, your Honor.

13 **THE COURT:** Under some circumstances the
14 corporation could waive its right to a jury trial and have
15 the Court alone make a decision?

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** You understand that the attorney
18 for the corporation would have the opportunity to cross
19 examine all of the witnesses called by the government to
20 testify against it?

21 **THE DEFENDANT:** Yes, your Honor.

22 **THE COURT:** And again, if found guilty, the
23 corporation would have the right to appeal the conviction?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** And the sentence that the Court

1 may impose for the violation?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** You understand again, by pleading
4 guilty, there won't be a trial. So the corporation is
5 waiving or giving up all of the rights that we just
6 discussed?

7 **THE DEFENDANT:** Yes, your Honor.

8 **THE COURT:** In terms of the elements or parts
9 of the charge that the government is required to prove
10 beyond a reasonable doubt, you understand that the first
11 among those would require the government to demonstrate at
12 a trial that the -- there was a conspiracy or agreement
13 reached among individuals and or other companies to
14 restrain trade?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** And that the trade involved
17 affected interstate or foreign commerce?

18 **THE DEFENDANT:** Yes, your Honor.

19 **THE COURT:** And that the -- your company,
20 Denso Corporation, voluntarily joined into this criminal
21 agreement or conspiracy to restrain trade in the manner
22 which is set forth in the information that you had a
23 chance to read?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** You have to prove -- do you have

1 to prove 5,000 employees or something as well?

2 **MS. HELLINGS:** No, that's part of the
3 culpability, but we would have to show that the defendant
4 knowingly entered into the agreement.

5 **THE COURT:** Okay. So as a part of
6 voluntarily and knowingly entering into this agreement,
7 you understand Denso Corporation would have to be shown to
8 understand the object or purpose of the criminal agreement
9 reached?

10 **THE DEFENDANT:** Yes, your Honor.

11 **THE COURT:** All right. Well, understanding
12 then the likely consequences of this plea of guilty and
13 understanding the rights that the corporation is giving up
14 in order to do so, is it still your wish to tender this
15 plea of guilty on behalf of the defendant?

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** How then does Denso Corporation
18 wish to plea, guilty or not guilty?

19 **THE DEFENDANT:** Guilty.

20 **THE COURT:** And would you like to describe
21 what you believe the corporation did in order to be found
22 guilty of this charge?

23 **THE DEFENDANT:** Yes, your Honor. In
24 anticipation of your question, I prepared some notes which
25 I will be referring to.

THE COURT: Okay.

THE DEFENDANT: Denso Corporation is a Japanese company with its headquarters in the city of Kariya, Japan. It employs more than 5,000 people.

Denso International America, Inc. or DIAM, is a U.S. subsidiary of Denso Corporation. I will refer to them collectively as Denso.

As to the first count, Denso manufacturers, among other things, electronic control units or ECU's, including one type commonly referred as a body ECU.

During the period listed in the information, approximately January 2000 to February 2010, certain managers and employees of Denso had discussions and meetings with competitors that also manufactured and sold body ECU's.

During these discussions and meetings, agreements were reached to allocate the supply of body ECU's sold to an automobile manufacturer, rig bids quoted to this automobile manufacturer for these body ECU's, and to fix, stabilize and maintain the prices of body ECU's sold to this automobile manufacturer in the United States and elsewhere.

Body ECU's sold by Denso and or the competitors, related equipment and supplies and payments for the body ECU's traveled interstate and or foreign commerce, and

1 substantially affected interstate and or foreign trade and
2 commerce.

3 The meetings and discussions with competitors took
4 place in the United States and elsewhere, and body ECU's
5 that were the subject of the conspiracy were sold to the
6 automobile manufacturer by Denso Corporation's U.S.
7 subsidiary, which is located in the Eastern District of
8 Michigan.

9 During the relevant period for purposes of this
10 plea agreement, Denso had approximately \$237 million of
11 sales of body ECU's to this automobile manufacturer.

12 As to the second count, Denso also manufactured
13 heater control panels during the period listed in this
14 information, approximately January 2000 to February 2010.

15 Certain managers and employees of Denso had
16 discussions and meetings with competitors that also
17 manufactured and sold heater control panels.

18 During these discussion and meetings, agreements
19 were reached to allocate the supply of heater control
20 panels sold to an automobile manufacturer to rig bids
21 quoted to this automobile manufacturer for heater control
22 panels, and to fix, stabilize and maintain the prices of
23 heater control panels sold to this automobile manufacturer
24 in the United States and elsewhere.

25 Heater control panels sold by Denso and or the

1 competitors, related equipment and supplies and payments
2 for the heater control panels traveled interstate and or
3 foreign commerce, and substantially affected interstate
4 and or foreign trade and commerce.

5 The meetings and discussions with competitors took
6 place in the United States and elsewhere, and heater
7 control panels that were the subject of the conspiracy
8 were sold to the automobile manufacturer by Denso
9 Corporation's U.S. subsidiary, which is located in the
10 Eastern District of Michigan.

11 During the relevant period for purposes of this
12 plea agreement, Denso had approximately \$211 million of
13 sales of heater control panels to this automobile
14 manufacturer.

15 **THE COURT:** All right. Is counsel satisfied
16 with the factual basis advanced here?

17 **MS. HELLINGS:** Yes, your Honor.

18 **MR. CHERRY:** Yes, your Honor.

19 **THE COURT:** And are counsel also satisfied
20 with the balance of the plea and its -- that it conforms
21 with the applicable court rules?

22 **MS. HELLINGS:** Yes, your Honor.

23 **MR. CHERRY:** Yes, your Honor.

24 **THE COURT:** The Court is also satisfied that
25 the plea is voluntary, knowledgeable and accurate. The

1 elements of the charge have been established by the
2 testimony received.

3 The Court will accept the plea of guilty, and
4 having reviewed the plea agreement as well as the
5 sentencing memorandum that the Court has received, I'm
6 satisfied that the plea agreement itself may be received
7 at this point as well.

8 Accordingly, we will proceed to the sentencing
9 phase, inasmuch as I understand both counsel is requesting
10 that the Court waive the preparation of a Pre-Sentence
11 Reports; both counsel being satisfied that the memorandum,
12 background information provided would allow the Court to
13 meaningfully entertain and apply the factors that must be
14 considered by the Court in determining an appropriate
15 sentence in the matter.

16 Is that also accurate?

17 **MR. CHERRY:** Yes, it is, your Honor.

18 **MS. HELLINGS:** Yes, your Honor.

19 **THE COURT:** What on behalf of the defendant
20 would you like the Court to consider in determining a
21 sentence, sir?

22 **MR. CHERRY:** Your Honor, Denso sincerely
23 regrets its conduct which led to these proceedings, but it
24 is committed to making things right. It's committed to
25 the terms of the plea, which provide for a significant

1 sentence, a fine of \$78 million. Seven of our individuals
2 remain subject to potential criminal prosecution.

3 We also note that Denso's immediate cooperation,
4 the substantial nature of its cooperation, the burdens it
5 imposed on the company, we are committed to full and
6 continuing cooperation throughout the government's
7 investigation and any prosecution. We understand the
8 cooperation has been very beneficial to the government.

9 We also note the company request that there be no
10 term of probation. The company is again committed to full
11 cooperation. It has to do that and intends to do that.

12 We've also instituted an enhanced compliance
13 procedures, enhanced training, policies. The company has
14 implemented at the highest level a compliance committee
15 chaired by the executive vice president of global
16 operations, which is responsible for insuring compliance
17 with the law.

18 **THE COURT:** Okay. Thank you very much.

19 Ms. Hellings, on behalf of the government?

20 **MS. HELLINGS:** We would rest on our
21 sentencing memorandum, Exhibit A, to the plea agreement.
22 Do you any questions or if you would like to discuss it
23 with us any further, we can meet with you in camera to do
24 so, but otherwise I would rest on the papers.

25 **THE COURT:** Okay. Thank you.

1 On behalf of the corporation, are there any
2 additional comments from your representative, Mr. Zarowny?

3 **THE DEFENDANT:** Your Honor, Denso deeply
4 regrets this conduct. We apologize and take full
5 responsibility for our conduct.

6 Denso is a company that takes its corporate social
7 responsibility seriously, and we are strongly committed
8 taking all steps necessary to comply with the law. That
9 commitment includes our continued and complete cooperation
10 with the ongoing government investigation.

11 **THE COURT:** All right. Thank you, sir.

12 Well, the Court has had an opportunity to review
13 the sentencing memorandum submitted here, and has
14 considered the request for a sentence of a fine in the
15 amount of \$78 million. The method for calculating that
16 fine is set forth in the memorandum which will be a part
17 of public information in this file.

18 The guideline calculation is also set forth
19 which --

20 **MS. HELLINGS:** Your Honor, it is worth noting
21 the sentence memorandum was filed under seal. So it
22 wouldn't be publicly available.

23 **THE COURT:** Okay. I thought it was only
24 Exhibit A.

25 **MS. HELLINGS:** No, your Honor.

In terms of the culpability score that is determined, the base score is five. There is an upward addition of five points for the fact that Denso employs more than 5,000 employees, and the -- and there is an enhancement of three levels for the fact that there was behavior on behalf of the corporation to obstruct or impede justice, including the destruction of some documents, as well as a downward adjustment of two points for self-reporting the violations by the defendant ultimately, resulting in a total culpability score of 11.

22 Here, the government's request for fine includes
23 consideration of substantial assistance provided by the
24 defendant to its investigation of price fixing in
25 connection with both the electronic control units as well

1 as heater control panels in this industry, and
2 cooperation --

3 **MS. HELLINGS:** Your Honor, if I may, some of
4 this needs to stay under seal.

5 **THE COURT:** Yes, and the full extent of that
6 cooperation is the subject of information which has been
7 filed under seal with the Court, which the Court has
8 reviewed, and based upon that and the level of departure,
9 then believed commensurate with the assistance as
10 described in more detail in the memorandum, the ultimate
11 request for a fine of \$78 million, the Court finds to be
12 commensurate with the objectives of the sentencing statute
13 at Section 3553(a), which would include a consideration of
14 the general seriousness of the violation, obviously one of
15 great consequence to the markets and the ultimate
16 consumers of parts, and the need for a sentence that would
17 fairly deter future contact -- or conduct by Denso
18 Corporation and other actors in the auto supply industry
19 from similar violations in the future.

20 Given the fact that several individuals remain
21 exposed to possible criminal consequences for this
22 occurrence, that there are a multiplicity of civil actions
23 that are pending which will undoubtedly exact additional
24 damages for the offense, the Court is persuaded that
25 limiting the criminal consequences to a \$78 million fine

1 fairly accounts for the conduct, its seriousness and need
2 to deter this corporation and others from similar conducts
3 in the future.

4 Accordingly, and pursuant to the Sentencing Reform
5 Act of 1984, the Court will order that the defendant pay a
6 fine for the violation in the amount of \$78 million, will
7 order a special assessment in the amount of \$400 for the
8 violation in addition.

9 **MS. HELLINGS:** For each of the counts, and
10 there are two counts.

11 **THE COURT:** For each of the two counts for
12 total of \$800, and will not otherwise order a term of
13 probation, and in terms of the payment of this fine --

14 **MS. HELLINGS:** I understand the defendant
15 wants to pay by wire transfer. If you could make that
16 part of the judgment, that would be helpful.

17 **THE COURT:** Okay. So that will be paid
18 forthwith by wire transfer or within --

19 **MS. HELLINGS:** Within 15 days.

20 **MR. CHERRY:** Within 15 days, your Honor.

21 **THE COURT:** We will include that as a part of
22 the judgment.

23 Is there anything else that you believe should be
24 included as part of this judgment?

25 **MR. CHERRY:** Your Honor, I think just the

1 fact that the waiver of restitution because of the civil.

2 **THE COURT:** Okay. Given again the civil
3 actions that are pending in court, the Court will not be
4 ordering restitution or other costs that might otherwise
5 might be imposed under the statute.

6 Is there a need for the Court to retain
7 jurisdiction to enforce the terms of the plea agreement?

8 **MS. HELLINGS:** I don't think so, your Honor.

9 **THE COURT:** Okay. All right. You're in
10 agreement of that, counsel?

11 **MR. CHERRY:** We are, your Honor.

12 **THE COURT:** All right. So that will be the
13 extent of the judgment that is to be entered by the Court.

14 I won't be advising the defendant of a right to
15 appeal the conviction and sentence inasmuch as that has
16 been waived by the plea agreement, but we will get this
17 judgment entered today.

18 **MS. HELLINGS:** Thank you, your Honor.

19 **MR. CHERRY:** Thank you, your Honor.

20 **THE WITNESS:** Thank you, your Honor.

21

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24 (Proceedings concluded.)

25

C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

Ronald A. DiBartolomeo, CSR
Official Court Reporter

Date